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12 **UNITED STATES DISTRICT COURT**  
13 **DISTRICT OF NEVADA – LAS VEGAS DIVISION**

14  
15 INGEBORG KLEIN and KARIN KLEIN,  
16 Plaintiffs,  
17 v.

18 BAYER HEALTHCARE  
19 PHARMACEUTICALS INC.; BAYER  
20 CORPORATION; BAYER HEALTHCARE  
21 LLC; BRACCO DIAGNOSTICS, INC.;  
22 GUERBET LLC; MALLINKRODT INC.;  
MALLINKRODT LLC; and LIEBEL-  
FLARSHEIM COMPANY LLC,

Defendants.

Case No. 2:18-cv-01424-APG-GWF

**JOINT ~~PROPOSED~~ DISCOVERY PLAN**

(SPECIAL SCHEDULING REVIEW  
REQUESTED)

23 COMES NOW Plaintiffs Ingeborg Klein and Karin Klein (“Plaintiffs”) and Defendants  
24 BAYER HEALTHCARE PHARMACEUTICALS INC.; BAYER CORPORATION; BAYER  
25 HEALTHCARE LLC; BRACCO DIAGNOSTICS, INC.; MALLINCKRODT INC.;  
26 MALLINCKRODT LLC; GUERBET LLC; and LIEBEL-FLARSHEIM COMPANY LLC  
27 (collectively “Parties”) by and through their counsel of record and propose the following  
28 scheduling order pursuant to Fed. R. Civ. P. 26(f) and Local Rule 26-1(a).

## **INTRODUCTION**

This is a product liability action against eight separate corporate defendants for products, gadolinium-based contrast agents, that Plaintiffs allege to have caused personal injuries. With multiple separate corporate defendants, different corporate departments within each defendant that potentially have an involvement in the product at issue, complicated issues of science, regulatory submissions, sales, marketing, and pharmacovigilance, as well as the likelihood of large quantities of documents to be produced and reviewed, the period required for discovery will be somewhat longer than a single defendant action.

Specially Appearing Defendants Bayer HealthCare Pharmaceuticals Inc., Bayer Corporation, and Bayer HealthCare LLC (collectively “Bayer”) have filed a Motion to Dismiss Plaintiff’s Complaint in its entirety. Plaintiffs are agreeable to permit defendants to have their motions resolved before commencing any discovery as such, the Parties request that the Court hold all discovery obligations in abeyance until any and all Motions to Dismiss are resolved.

## **PROCEDURAL HISTORY**

On August 1, 2018, Plaintiffs filed their complaint against Defendants Bayer HealthCare Pharmaceuticals Inc., Bayer Corporation, Bayer HealthCare LLC, Bracco Diagnostics, Inc., Guerbet LLC, Mallinckrodt Inc., Mallinckrodt LLC, and Liebel-Flarsheim Company LLC.

Defendants Bayer HealthCare Pharmaceuticals Inc.; Bayer Corporation; Bayer HealthCare LLC; Bracco Diagnostics, Inc.; Mallinckrodt Inc.; Mallinckrodt LLC; Guerbet LLC; and Flarsheim Company LLC have been served with the complaint and summons.

On September 7, 2018, counsel for Bayer contacted counsel for Plaintiffs requesting a 30-day extension to file its responsive pleading to the Complaint to which Plaintiffs agreed.

On September 19, 2018, Defendants Bracco Diagnostics, Inc., Mallinckrodt Inc., and Mallinckrodt LLC filed their respective answers to the Complaint. Defendants Liebel-Flarsheim Company LLC Guerbet LLC have an extension to answer and intend to file an answer to the complaint by November 19, 2018 and have participated in this scheduling conference and proposal.

1 On October 19, 2018, Defendants Bayer HealthCare Pharmaceuticals Inc., Bayer  
2 Corporation, and Bayer HealthCare LLC filed a Motion to Dismiss Plaintiff's Complaint.

3 On November 1, 2018, the parties held a discovery planning conference pursuant to FRCP  
4 26(f) and Local Rule 26f-1. Included within these meets and confer efforts, Plaintiffs' counsel  
5 forwarded this proposed scheduling order for defendants consideration and potential stipulation.  
6 The parties have agreed upon the proposals set forth herein.

7 On November 2, 2018, Plaintiffs response to Defendants Bayer HealthCare  
8 Pharmaceuticals Inc., Bayer Corporation, and Bayer HealthCare LLC's Motion to Dismiss is due.  
9 In response to Defendants Bayer HealthCare Pharmaceuticals Inc., Bayer Corporation, and Bayer  
10 HealthCare LLC's Motion to Dismiss Plaintiffs plan on filing an opposition.

### 11 12 **STAY OF DISCOVERY**

13 The Parties request that the Court hold all discovery obligations in abeyance until any and  
14 all Motions to Dismiss are resolved. When considering a request to stay discovery, "this court  
15 must decide whether it is more just to speed the parties along in discovery and other proceedings  
16 while a dispositive motion is pending, or whether it is more just to delay or limit discovery and  
17 other proceedings to accomplish the inexpensive determination of the case." *Tradebay, LLC v.*  
18 *eBay, Inc.*, 278 F.R.D. 597, 603 (D. Nev. 2011). Particularly because Bayer's pending motion  
19 could result in a narrowing of issues, the parties to this action, or both, the Parties submit that it  
20 will be best for the parties and the Court if discovery is stayed until any and all Motions to Dismiss  
21 are resolved. In sum, the principles articulated in FRCP 1—justice, expediency, and efficiency—  
22 support staying discovery while the motions to dismiss are pending.

23 The Parties propose the following as the Discovery Plan and Scheduling Order, including  
24 the request to stay discovery pending resolution of the motions to dismiss before the district court.

### 25 26 **PROPOSED SCHEDULE**

27 1. Discovery shall be held in abeyance until disposition of Defendants Bayer  
28 HealthCare Pharmaceuticals Inc., Bayer Corporation, and Bayer HealthCare LLC's Motion to

1 Dismiss as well as the disposition of any motion to dismiss by Defendants Liebel-Flarsheim  
2 Company LLC Guerbet LLC if they file such a motion.

3         2.       The Parties propose that within thirty (30) days after the Court enters an Order  
4 ruling on all motions to dismiss, in the event any claim remains pending, the Parties shall submit a  
5 joint pretrial discovery plan on all remaining discovery events, as well as a dispositive motion  
6 briefing schedule. The Parties further agree to meet and confer to propose a stipulated protective  
7 order regarding confidential information and an ESI protocol at that time.

8         3.       The Parties emphasize that numerous United States District Courts have recently  
9 delayed discovery until after resolution of motions to dismiss in cases claiming injuries from  
10 gadolinium-based contrast agents, the products that Plaintiffs in this action allege that they used.  
11 *See, e.g.,* Dkt. No. 55, *Zelazny v. Bayer HealthCare Pharmaceuticals Inc. et al.*, No. 1:18-cv-  
12 03246 (July 18, 2018) (“Discovery is stayed pending the resolution of the motions [to dismiss].”);  
13 Dkt. No. 47, *Goodell v. Bayer HealthCare Pharmaceuticals Inc. et al.*, No. 1:18-cv-10694 (July 3,  
14 2018) (directing parties to “exchange initial disclosures” and “submit a joint pretrial discovery  
15 plan” “[w]ithin thirty (30) days after the Court enters an Order ruling on Bayer’s Motion to  
16 Dismiss”); Dkt. No. 65, *McGrath v. Bayer HealthCare Pharmaceuticals Inc. et al.*, No. 1:18-cv-  
17 02134 (July 11, 2018) (“The motion to stay [discovery] is granted.”).

18  
19               DATED November 2, 2018.

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13 **IT IS SO ORDERED.**

14 DATED: 11-8-2018

15 

16 UNITED STATES MAGISTRATE JUDGE